

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-549

KELTON ESQUIRE BOND
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 6, 2010

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
SECOND DIVISION
[NO. 2007-1763-2(A)]

HONORABLE DAVID CLINGER,
JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

Kelton Bond appeals following his convictions for numerous drug-related offenses. His sole argument on appeal is that the trial court erred when it increased the amount of his bail as a condition of appellant's request to dismiss his retained counsel on the eve of his trial. Appellant asserts that this court should remand the case for a new trial. We disagree and affirm.

The State charged appellant with six counts of delivery of cocaine (Class Y felonies), three counts of delivery of marijuana (Class C felonies), one count of possession with intent to deliver cocaine (a Class Y felony), one count of possession with intent to deliver marijuana (a Class C felony), and one count of simultaneous possession of drugs and firearms (a Class Y felony). Appearing with his privately retained attorney, Bruce Bennett, appellant entered a

plea of not guilty and requested a jury trial. Trial was set for September 23, 2008, and appellant was released on bail, which was set at \$250,000.

At a motions hearing on September 19, 2008, appellant informed the court that he wished to retain new counsel. He gave no explanation when asked why he no longer wished to be represented by Mr. Bennett. Relying on its interpretation of Arkansas Rule of Professional Conduct 1.16(a)(3), the trial court granted appellant's request and continued the trial date. However, the court stated that it perceived the request as a "stall tactic" and expressed concern regarding the number of charges against appellant and the likelihood that he would appear for court. The trial court re-set appellant's bail at \$500,000 "to attempt to ensure his compliance with court orders and appearance for trial." In response to the new bail amount, appellant stated that he could not afford to post the new bond and that he would not be able to find new counsel if he were incarcerated. Appellant then informed the court that he wished to continue to retain Mr. Bennett's services. The court reinstated the trial date and \$250,000 bail amount.

The jury found appellant guilty of all but two counts of delivery of cocaine. He was sentenced to a total of 115 years' imprisonment in the Arkansas Department of Correction. The judgment and commitment order was entered on October 20, 2008, and appellant filed a timely notice of appeal on October 21, 2008.

For his appeal, appellant asserts that the trial court "forced" him to go to trial with an attorney he did not want when it increased the bail amount as a condition of the continuance.

The Sixth Amendment to the United States Constitution gives a defendant the right to counsel of his choice. This right is also grounded in article 2, section 10 of the Arkansas Constitution. However, the right to choose a particular attorney is not absolute. *Edwards v. State*, 321 Ark. 610, 615, 906 S.W.2d 310, 313 (1995). A defendant may not use the right to frustrate the inherent power of the courts to command the orderly, efficient, and effective administration of justice. *Id.* A defendant's motion to change counsel on the eve of trial is treated as a motion for a continuance, since such a change requires a continuance to allow the new attorney time to prepare for trial. *Id.* Whether to grant the continuance in order to allow new counsel is left to the discretion of the trial judge, and his decision will not be overturned absent a showing of abuse. *Id.* The defendant bears the burden of establishing such abuse on appeal. *Id.*

No such abuse is evident in this case. In fact, the trial court granted appellant's motion to change counsel and granted a continuance, although it would have been within its discretion to deny the motion based on appellant's lack of an explanation for why the change was necessary and the court's finding that the change was requested in order to delay the trial. *See id.* The real issue in this case is whether the trial court erred by increasing appellant's bail as a condition of the continuance.

The amount of a pretrial bail bond rests in the discretion of the trial court. *Foreman v. State*, 317 Ark. 146, 148, 875 S.W.2d 853, 854 (1994). In setting the amount, the trial court should consider all facts relevant to the risk of willful nonappearance. Ark. R. Crim.

P. 9.2(c)(i)–(ix) (2010). There are several factors the trial court should particularly consider, including the nature of the current charges against the defendant, the apparent probability of conviction, and the likely sentence, insofar as these factors are relevant to the risk of nonappearance. Ark. R. Crim. P. 9.2(c)(viii).

Here, appellant’s bail was set at \$250,000 and was increased because the trial court felt appellant was purposely delaying his trial by requesting a new attorney at the last minute. Appellant could not articulate a reason for his request, nor had he expressed any dissatisfaction with his attorney in the months leading up to the trial. Moreover, appellant faced numerous felony charges that carried lengthy potential sentences of up to life imprisonment. *See* Ark. Code Ann. § 5-4-401(a) (Repl. 2006). The record clearly indicates that the trial court considered these facts when re-setting appellant’s bail amount and found that they indicated an increased risk that appellant might not appear for his trial if the trial were continued. Therefore, the trial court acted within its discretion when it increased appellant’s bail as a condition of the continuance.

Affirmed.

ROBBINS and BROWN, JJ., agree.